



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

**TE/GE: EO Examinations**

**1100 Commerce Street, MC 4920 DAL**

**Dallas, TX 75242**

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

**September 28, 2015**

Release Number: **201603042**

Release Date: 1/15/2016

UIL Code: 501.03-00

**Taxpayer Identification Number:**

**Person to Contact:**

**Identification Number:**

**Contact Telephone Number:**

**CERTIFIED MAIL**

Dear:

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated September 21, 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective July 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

You are not operating for any charitable, religious, educational, or other exempt purpose. Our examination, for the tax year ended June 30, 20XX, reveals that you are not engaged primarily in activities which accomplish religious, charitable, educational or other exempt purposes as required by Treas. Reg. section 1.501(c)(3)-1(c)(1). Moreover, you failed to establish that you were not operated for the benefit of the private interest of your president as required for continued recognition of exemption pursuant to Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii). Your income or assets inured to the benefit of private shareholders and individuals.

You failed to keep adequate books and records as required by I.R.C. sections 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627. Your organization is inactive and there have been no operations or financial activities conducted or planned. As such you fail to meet the operational requirements for continued exemption under I.R.C. section 501(c)(3).

Contributions to your organization are no longer deductible under IRC §170 after July 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending June 30, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, D.C. 20217

United States Court of Federal Claims  
717 Madison Place, NW  
Washington, D.C. 20005

United States District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, D.C. 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Margaret Von Lienen  
Director, EO Examinations

Enclosure:  
Publication 892





**Department of the Treasury  
Internal Revenue Service**

Five Resource Square, Ste1305  
10715 David Taylor Drive,  
Charlotte, NC 28262

**Date:**

December 12, 2014

**Taxpayer Identification Number:**

**Form:**

990

**Tax year(s) ended:**

June 30, 20XX

**Person to contact / ID number:**

**Contact numbers:**

Phone Number:

Fax Number:

**Manager's name / ID number:**

**Manager's contact number:**

Phone Number:

**Date:**

**Certified Mail - Return Receipt Requested**

Dear :

**Why you are receiving this letter**

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

**What you need to do if you agree**

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

**If we don't hear from you**

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

**Effect of revocation status**

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

**What you need to do if you disagree with the proposed revocation**

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service  
Office of the Taxpayer Advocate

**For additional information**

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Stephen A. Martin  
Acting Director, EO Examinations

Enclosures:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

**ISSUE:**

1. Whether \_\_\_\_\_, herein referred to as \_\_\_\_\_, meets the operational test as described under IRC 501(c)(3)?
2. Whether \_\_\_\_\_ has substantially complied with the requirements of maintaining adequate records?
3. Whether \_\_\_\_\_ assets inured to the benefit of a disqualified person?

**FACTS:**

**Articles of Incorporation:**

\_\_\_\_\_ was incorporated in the state of \_\_\_\_\_ on July 15, 19XX.

The Articles of Incorporation, which was signed by \_\_\_\_\_ on March 13, 19XX, state that the purposes of the corporation are to:

- *Provide affordable and safe housing and family life for men and women needing and desiring residential living quarters for short term periods of time;*
- *Encourage and support responsible independent and small group living skills;*
- *Provide for the physical, spiritual and emotional growth and stability of tenants; and*
- *Maintain, encourage, and support an atmosphere of recovery for all residents.*

The Articles of Incorporation also provide the following -

*The affairs of the corporation at all times will be conducted in such a manner as to assure its status as a "publicly supported" organization as defined in section 509(a)(1) or section 509(a)(2) or section pursuant to section 501(c)(3) of the Internal Revenue Code.*

*The initial registered location of the corporation shall be at \_\_\_\_\_, in \_\_\_\_\_.*  
*The initial registered agent and President for the corporation at such address is \_\_\_\_\_.*

*There will be four levels of donors as follows: individuals, churches, organizations, corporations; the donor dollar amount will be set, from time to time, by the Board of Directors.*

**Application for Exemption:**

Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, as signed by \_\_\_\_\_, President on March 19, 19XX, provides the following as it pertains to its activities:

*\_\_\_\_\_ was organized to serve the substance abuse recovery community as a shelter by providing affordable and safe housing and family life for men and women needing and desiring residential living quarters for short-term periods of time. With this mission in mind, one of the activities of \_\_\_\_\_ is to seek and secure housing that can be renovated for residential living of persons who are in recovery. These individuals will be referrals from other shelters, churches, jails or hospitals such as \_\_\_\_\_ or \_\_\_\_\_ a therapeutic community 36 miles outside of \_\_\_\_\_.*



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

*To encourage and support responsible independent and small group living skills. A second activity will be to develop a curriculum for life skills training or retraining for the residents of*

*To provide for the physical, spiritual, and emotional growth and stability of residents. In addition, we will be hiring counselors to facilitate secular and spiritual training for our residents.*

*To maintain, encourage, and support an atmosphere of recovery for all residents. To work with individuals on their re-entry into society while in recovery. We will also assist with educational requirements, reading – writing and assisting with our residents acquiring their GED (for those that may need it.*

*Believes that by assisting with the development of a sense of hope and worth for individuals who have seemingly lost all hope and self-worth, we can offer a better environment for former substance abusers. An environment wherein they can become productive individuals and contributors as a part of their recovery and learn themselves to become sharer in the process of their recovery.*

The following responses are stated within Form 1023 as it pertains to support, fundraising, and assets:

*Our financial support will come from the following: , , City/County Government, , Board earned income, Tenants rental contributions, Donations, Individual giving, Homeless Service Providers, .*

*Since the organization is new, we have not developed a fundraising committee. We are planning to begin to develop a selective mailing campaign to help let the public know that we are here and, we are scheduling to make presentations before organization that will be making referrals or supporting*

*The organization is seeking to acquire the houses to be used to resident recovering men and women. We are in the transitional stages.*

In a letter dated August 6, 19XX, the IRS requested additional information in the processing of the Form 1023 to include, in part, a detailed description of facilities to conduct activities and fees associated with tenant rent.

In a response, signed by on August 27, 19XX, the following information was provided:

*...There are five (5) locations. The management of all five facilities is conducted by a board of directors. The board has the responsibility for the management and financial needs of . An executive director has been put into place to be responsible for the day-to-day operations. Executive director reports monthly to the board. At the last board meeting, the board voted to develop a site managers for each location from among the residents. This action will initiate the life skills training. The houses and staff person are compensated by in-kind donations, grants (new effort), and minimum contributions by the residents and their family.*

*Fee schedule was developed out of a need to contract some services and hire an executive director. Fee schedule includes food, some clothing, training programs fitted to resident's needs and administration.*



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended 06/30/20XX

Fee Schedule

	Address	No. of Tenants	Weekly Income	Expenses				
				Mortgage	Utilities	Taxes	Insurance	Maintenance
Unit 1		7						
Unit 2		4				**	**	
Unit 3		6				**	**	
Unit 4		4*				**	**	
Unit 5		3*				**	**	

\*1 vacancy

\*\*Taxes and insurance included in mortgage

**IRS Determination:**

On September 21, 19XX, \_\_\_\_\_ was granted exemption by the IRS in an advanced ruling letter under IRC 501(c)(3) as a public charity described under Section 509(a)(1) and 170(b)(1)(A)(vi).

IRS records provide that \_\_\_\_\_ is currently described as a public charity described under IRC 509(a)(2).

**Bylaws:**

Bylaws further provides the following statement:

*"The governing body shall be the board of directors. The board shall comprise of individual representation of the community wherein the corporation envisions serving. The board shall have supervision, control and direction of the management, affairs, and property of the corporation."*

**Board Meeting Minutes:**

Board meeting minutes were requested via Information Document Request (IDR) 1 in an effort to determine the activities conducted by the organization, whether effective control lies with the board, as stipulated in the Bylaws, or with a single individual, and to determine any agreements discussed and approved by the board for the President's personal use of the organization's assets. No meeting minutes were provided.

**Assets:**

**House:**

\_\_\_\_\_ property records provide that the property at \_\_\_\_\_ is listed in the name of \_\_\_\_\_ c/o \_\_\_\_\_. The deed shows that \_\_\_\_\_ (also known as \_\_\_\_\_) granted the property to \_\_\_\_\_ on July 11, 20XX.

\_\_\_\_\_ property tax information listed in the name of \_\_\_\_\_ for property listed at \_\_\_\_\_ provides that property taxes were assessed for \$ \_\_\_\_\_ in 20XX and 20XX for waste fees. There is no property tax assessment as the facility is listed as exempt by the county.

This property is inhabited by the President, \_\_\_\_\_ (formerly \_\_\_\_\_), and his son; there have been no other tenants residing in the facility. No records were provided to reflect any agreement or board approval for use of the home by the President or rent to be paid.

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

Vehicle:

In the examination year, there was a 2002 Mercedes stated to have been used to transport tenants. No records were secured by the organization for the examination year. However, property tax information for a subsequent year was provided which reflects a 2002 Mercedes S430V in the name of \_\_\_\_\_ and tax payment of \$ \_\_\_\_\_. The President provides that this vehicle is no longer in use as a result of water damage; however, no records or additional information were provided to substantiate the status of this asset.

This vehicle was driven by the President for personal use but no records were maintained to substantiate and distinguish personal use from business use of the asset. Additionally, there were no records provided showing any agreement by the governing board approving personal use of this asset.

The Form 990 does not reflect these assets nor the expenses associated with the property.

Review of the President's personal tax return identified deductions for mortgage interest and real estate taxes in 20XX and 20XX as follows:

<u>Tax Form</u>	<u>Line Item</u>	<u>20XX</u>	<u>20XX</u>
F1040, Schedule A	Real Estate Taxes		
F1040, Schedule A	Mortgage Interest		

Utilities:

The following utility payments for the fiscal year on the property listed at \_\_\_\_\_ are listed as follows:

<b>Company</b>	<b>Description</b>	<b>Pmt. Addressed To</b>	<b>FY20XX Pmt. Amt.</b>
	Power		
	Water/Sewer		
	Gas		
Property Tax (Car)	Car Tax	-	
Property Tax (House)	Property Tax		
(House)	Insurance		
		<b>TOTAL</b>	

Bank Records:

Per the initial interview, the President was the only officer with signature authority on bank accounts and who could make or write checks.

\_\_\_\_\_ had an account with \_\_\_\_\_ (Acct. # \_\_\_\_\_) with a closing balance of \_\_\_\_\_ for statement period 08/01/20XX to 08/31/20XX. The statement provides the account was closed 08/24/20XX.

In a letter issued from \_\_\_\_\_ on 03/25/XX, \_\_\_\_\_ had an account (Acct. # \_\_\_\_\_) that was opened on 07/24/20XX and closed on 05/04/20XX. No other statements or records were provided to substantiate the amount of funds maintained in the account for the period covering the examination year.

\_\_\_\_\_ did not have or provide any bank records covering the examination period.



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

**Support:**

has failed to make efforts to obtain support from the general public, government sources, or fees from related activities.

has not provided shelter for recovering addicts as stated in its Articles and Form 1023 Application for Exemption.

reported no revenues on its Form 990.

**Form 990:**

Form 990 for tax year ending June 30, 20XX report zero revenues, expenses, assets, liabilities and net assets/fund balance.

Prior year Form 990 reports zero revenues and expenses for the year. However, the balance sheet reports cash and prepaid expenses under assets and payables to current officers, secured mortgages and notes payable to unrelated third parties and unsecured mortgages and notes payables to unrelated third parties under liabilities. The Form 990, Schedule O also reflects the statement "*organization was inactive 20XX.*"

Subsequent year Form 990 reports zero revenues, expenses, assets, liabilities and net assets/fund balance.

**Inadequate Records:**

The Form 990 for tax year ending June 20XX was examined by the IRS in which a Form 2807 (Exhibit 1), Agreement to Maintain Adequate Books of Account and Record, was issued and agreed upon by on May 12, 20XX. In addition, the organization was issued an inadequate records notice letter (Exhibit 2), an inadequate records notice closing letter (Exhibit 3) and a Form 990 closing letter with addendum outlining deficiencies identified during the conduct of the examination to include insufficient recordkeeping (Exhibit 4).

On January 9, 20XX, an initial appointment letter was issued, with Information Document Requests (IDR) 1 and 2, to schedule review of the organization's books and records on February 3, 20XX.

IDR 1 issued with the initial appointment letter requested the following information:

1. Organizational documents (i.e., Form 1023, IRS determination letter, Articles of Incorporation, Bylaws)
2. Operational documents (i.e., meeting minutes, contracts, publications)
3. Internal Revenue Service examination reports, letters, rulings, technical advice memorandums, etc.
4. Documentation of all contracts (i.e. rental agreements, grants, employment, services, royalties, etc.), written and oral, executed by and on behalf of the organization, including but not limited to all parties to the contract, amounts to be paid or received, payment terms, all other terms of the agreement
5. Loan documents (i.e., board approval/agreement of loans to officers, loan agreements, schedule of payments/repayments)
6. Financial documents (i.e., bank records, financial statements, cash and disbursements, General Ledger)
7. Bank records (i.e., bank statements, check registers)



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

8. Payroll records (i.e., employment and information returns)
9. Prior and subsequent year returns

This information was requested to help the Service determine whether the organization:

1. Is properly operated and organized under IRC 501(c)(3)
2. Has filed all required information and tax returns
3. Obtained any unrelated business income which would subject it to tax under IRC 511
4. Participated or intervened in any political or substantial legislative activities
5. Conducted any excess benefit transactions which would subject disqualified persons to tax under IRC 4958

IDR 2 issued with the initial appointment letter requested information pertaining to the donors, revenues, types of support and activities to help the Service determine whether the organization is properly classified under the correct foundation status.

On January 14, 20XX, \_\_\_\_\_, President, called to request an extension of time to prepare for the examination at which time the examination date was extended to February 10, 20XX.

On February 10, 20XX, the President provided limited information to include: prior year bank records, an incomplete copy of the Articles of Incorporation, Bylaws, prior and subsequent year Form 990, prior year pamphlets, a book written by the President, and prior year correspondence. Most of the information provided was for years significantly before the examination year. Throughout the conduct of our examination, records were requested but limited information was provided.

**LAW:**

IRC §501(c)(3) of the Code exempts from federal income tax organizations which are organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Tax Reg. §1.501(c)(3)-1(a)(1) states that in order to be an exempt organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Tax Reg. §1.501(c)(3)-1(d)(i) states that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Tax Reg. §1.501(c)(3)-1(d)(2) defines the term "charitable," in part, to include: relief of the poor, distress or underprivileged, advancement of religion, education or science, erection or maintenance of public buildings.

Tax Reg. §1.501(c)(3) defines "education," as used in 501(c)(3), as the instruction or training of the individual for purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community.

Tax Reg. §1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Tax Reg. §1.501(c)(3)-1(c)(2) states that an organization is not exclusively operated for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Tax Reg. §1.501(a)-1(c) defines "private shareholder or individual" as referring to persons having a personal and private interest in the activities of the organization.

Tax Reg. §1.501(c)(3)-1(f)(2)(i) states in general that regardless of whether a particular transaction is subject to excise taxes under section 4958, the substantive requirements for tax exemption under section 501(c)(3) still apply to an applicable tax-exempt organization (as defined in section 4958(e) and §53.4958-2) described in section 501(c)(3) whose disqualified persons or organization managers are subject to excise taxes under section 4958. Accordingly, an organization will no longer meet the requirements for tax-exempt status under section 501(c)(3) if the organization fails to satisfy the requirements of paragraph (b), (c) or (d) of this section.

Tax Reg. §1.501(c)(3)-1(f)(2)(ii) provides in determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization (as defined in section 4958(e) and §53.4958-2) described in section 501(c)(3) that engages in one or more excess benefit transactions (as defined in section 4958(c) and §53.4958-4) that violate the prohibition on inurement under section 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following:

(A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;

(B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;

(C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;

(D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and

(E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and §53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

IRC 509(a)(1) states that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Tax Reg. §509(a)(1) & 170(b)(1)(A)(vi) provides that an organization is one that normally receives a substantial part of its support from a governmental unit or from the general public is not a private foundation.

Tax Reg. §1.170A-9(e)(1)(vi) states in part that an organization is described in section 170(b)(1)(A)(vi) if it is a "publicly supported" organization. An organization is publicly supported if it normally receives a



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended 06/30/20XX

substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public.

Tax Reg. §1.170A-9(e)(8)(i) provides that for purposes of the one-third support test and the 10% facts-and-circumstances test under section 170(b)(1)(A)(vi), "support from a governmental unit" includes any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a Government research grant. However, such amounts will not constitute "support from a governmental unit" for such purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions.

IRC 509(a)(2)(A) provides that an organization described under this section is one which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business, not including such receipts from any person, or from any bureau or similar agency of a governmental unit, in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons with respect to the organization, from governmental units, or from other organization's described in 170(b)(1)(A) and IRC 509(a)(2)(B) normally receives not more than one-third of its support in each taxable year from the sum of gross investment income and the excess (if any) of the amount of the unrelated business taxable income over the amount of the tax imposed.

Tax Reg. §1.509(a)-3(a)(4) provides that the one-third support test and the not-more-than-one-third support test are designed to insure that an organization which is excluded from private foundation status under section 509(a)(2) is responsive to the general public, rather than to the private interests of a limited number of donors or other persons.

Tax Reg. 1.509(a)(3)-4(b) states that in order to qualify as a supporting organization, an organization must be both organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of, one or more specified publicly supported organizations. If an organization fails to meet either the organizational or operational test, it can not qualify as a supporting organization.

Tax Reg. 1.509(a)(3)-4(c)(1) provides that an organization is organized exclusively for one or more of the purposes specified in section 509(a)(3)(A) only if its articles of organization: 1) Limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A); 2) Do not expressly empower the organization to engage in activities which are not in furtherance of its purposes; 3) State the specified publicly supported organizations on whose behalf such organization is to be operated; and 4) Do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations.

Tax Reg. 1.509(a)(3)-4(e)(1) provides, in part, that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations.

Rev. Proc. 90-27, 1990-1 C.B. 514, (April 30, 1990) states that a ruling or determination letter recognizing exemption may be revoked or modified by (1) a notice to the taxpayer to whom the ruling or determination letter originally was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) issuance of temporary or final regulations, or (5) issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended 06/30/20XX

section 503 applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change. In cases where a ruling or determination letter was issued in error or is no longer in accord with the holding of the Service, when section 7805(b) relief is granted (see sections 15 and 18 of Rev. Proc. 90-4), retroactivity of the revocation or modification ordinarily will be limited to a date not earlier than that on which the original ruling or determination letter is modified or revoked.

IRC 4958(e) and Tax Reg. §53.4958-2(a)(1) defines "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction.

Tax Reg. §53.4958-8(a) states that Section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3) or (4), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual. Thus, regardless of whether a particular transaction is subject to excise taxes under section 4958, existing principles and rules may be implicated, such as the limitation on private benefit. For example, transactions that are not subject to section 4958 because of the initial contract exception described in §53.4958-4(a)(3) may, under certain circumstances, jeopardize the organization's tax-exempt status.

IRC 4958(c) defines "excess benefit transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

IRC 4958(a)(1) imposes a tax on each excess benefit transaction a tax equal to 25 percent of the excess benefit (the first tier tax). This tax must be paid by any disqualified person with respect to such transaction. An additional tax is imposed of 10 percent of the excess benefit on each organizational manager who knowingly participates in such transaction, unless such participation is not willful and is due to reasonable cause per Tax Reg. 4958(a)(2).

IRC 4958(b) provides that where an initial tax is imposed, but the excess benefit involved is such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the second tier tax).

IRC 4958(f)(1) defines "disqualified person as:

- (A) Any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization;
- (B) A member of the family of a disqualified person; and
- (C) A 35-percent controlled entity

Tax Reg. 53-4958-3(a)(1) further defines a disqualified person, with respect to any transaction, as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any during the five-year period ending on the date of the transaction.



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended 06/30/20XX

Additionally, Tax Reg. 53-4958-3(b)(1) states that a person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a qualified person with respect to any transaction with the same organization. A person's family includes the person's spouse.

Tax Reg. 53-4958-3(c) provides that voting members of the governing body, presidents, chief executive officers, or chief operating officers are persons who are in a position to exercise substantial influence over the affairs of the organization.

IRC 4958(f)(2) defines "organizational manager" as officer, director, or trustee (or any individual having powers or responsibilities similar to officers, directors, or trustees) of any applicable tax exempt organization.

Tax Reg. 53-4958-1(d)(4)(i) provides that an organization manager knowingly participates in an excess benefit transaction where: (i) he has actual knowledge that the transaction would be an excess benefit transaction, (ii) is aware that the particular transaction may constitute an excess benefit transaction, and (iii) negligently fails to make a reasonable attempt to determine if the transaction is an excess benefit transaction, or is aware it is an excess benefit transaction.

Tax Reg. 53-4958-1(d)(5) provides that an organization manager's participation in an excess benefit transaction is willful if it is voluntary, conscious and intentional.

Tax Reg. 53-4958-4(a)(1) states that to determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization and all entities if controls are taken into account.

Tax Reg. 53.4958-49(c)(1) provides, in part, that an economic benefit is not treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid. Intent is demonstrated by written substantiation that is contemporaneous with the transfer of the economic benefit. If an organization fails to provide this contemporaneous substantiation, any services provided by the disqualified person will not be treated as provided in consideration for the economic benefit for purposes of determining the reasonableness of the transaction.

Tax Reg. 53.4958-4(c)(3) provides, in part, that contemporaneous substantiation can be demonstrated by:

- (A) the organization reporting the benefit as compensation on an original or amended Form W-2, 1099 or 990, provided that the amended form is filed before an examination has been started on the organization or disqualified person; or
- (B) The disqualified person reporting the benefit as income on an original or amended Form 1040, provided that the amended Form 1040 is filed before an examination has been started on the organization or disqualified person; or
- (C) Other written contemporaneous evidence can be used to demonstrated that the authorized body or an officer authorized to approve compensation has approved a transfer as compensation in accordance with established procedures, including an approved written employment contract executed on or before the date of the transfer, or documentation satisfying the requirements of section 53-4958-6(a)(3) indicating that an authorized body approved the transfer as compensation for services on or before the date of transfer.

If the failure to report an economic benefit is due to reasonable cause (within the meaning of §301.6724-1), however, then the organization will be treated as having clearly indicated its intent to provide an economic benefit as compensation for services.



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended 06/30/20XX

Tax Reg. 301.6724-1 of the regulations provides that the reasonable cause can be established by showing that there were significant mitigating factors with respect to a failure to report, or that a failure arose from events beyond the organization's control, and that the organization acted in a responsible manner both before and after the failure occurred.

Tax Reg. 53-4958-6(a) provides that payments under a compensation arrangement are presumed to be reasonable if all of the requirements in §53.4958-6(c) are satisfied as follows:

1. The compensation arrangement is approved in advance by an authorized body of the organization or an entity it controls, composed entirely of individuals who do not have a conflict of interest as to the compensation arrangement or property transfer;
2. Prior to making its determination, the authorized body obtained and relied upon appropriate data as to comparability; and
3. The authorized body adequately documented the basis for its determination concurrently with making that determination.

In Rameses School of San Antonio, TX v. C.I.R. (T.C. Memo 2007-85 2007) the court held that the school was subject to revocation of its exempt status on account of failure to satisfy the operational test, which failure in turn was based on private benefit and private inurement. In such case, it was determined that inurement was evidenced by the failure of the duty of the governing board to provide oversight, direction, supervision and control over the administration of the school as required by its charter thus allowing its founder to exercise authority over the school without oversight from the board of directors; lack of supporting documentation in evidence of expenditures to pay for personal services of the founder; purchasing property as an individual and not as a representative of the school using school funds; and lease payments made by the founder in which no board meeting minutes exist demonstrating notice, acceptance or ratification of the lease in addition to no lease agreements being provided by the school.

In Airlie Foundation, Inc. v. U.S., 826 F.Supp. 537, 1993, the District Court held that the IRS properly revoked an organization that was not operated exclusively for an exempt purpose when it was operated to a substantial extent for the benefit of its founder, the organization was a part of a network of organizations controlled by the founder, and the founder made various transactions within that network that abused the organization's and inured to the founder's personal benefit.

The court upheld revocation in Church By Mail, Inc. v. C.I.R., 765 F.2d 1387. It found that the purpose and objective to which the income an organization is devoted is the ultimate test in determining whether it is operated exclusively for an exempt purpose.

In Samuel Friedland Foundation v. U.S., 144 F. Supp. 74, the court states, "the issue of 'organized,' as this Court now conceives the law, is primarily a question of fact not to be determined merely by an examination of the certificate of incorporation but by the actual objects motivating the organization and the subsequent conduct of the organization. To some degree, 'organized' cannot be divorced from 'operated,' for the true purposes of organization may well have to be drawn in final analysis from the manner in which the corporation has been operated."

The court held that the Commissioner did not err in denying IRC 501(c)(3) exempt status of a church controlled by a family. Furthermore, nothing was shown in the statements of income or expenses, as budgeted or expended for the care of the needy, the sick or the imprisoned, traditionally the beneficiaries of the ministration of churches or for any kind of mission or evangelistic programs. The decision to expend church funds were made by the controlling family members of the organization, who served as voting members and board members, which significantly benefited the family. Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), affd. 670 F.2d 104 (9<sup>th</sup> Cir. 1981).



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

The word "private" is the antonym of "public;" a private shareholder, as distinguished from the general public, the supposed beneficiary of the benevolent activities of an institution devoted exclusively for public betterment. (Kemper Military School v. Crutchley, 274 F. 125, A.F.T.R. 1459 1921-4 C.B. 266)

In Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 412 F.2d 1197 (1969) cert. Den. 397 U.S. 1009 (1970), the court upheld that the organization was not entitled to exemption due to inurement. In such case, the founder of the church was not only paid, in addition to his salary, commissions and royalties but he and his family received unexplained payments in nature of loans and reimbursements. The church was not entitled to exemption from federal income taxation under statute, which includes among those organizations exempt from taxation a corporation organized and operated exclusively for religious or educational purposes, no part of net earnings of which inures to the benefit of any private shareholder or individual.

The court held that the Commissioner did not err in denying IRC 501(c)(3) exempt status of a church controlled by a family. Furthermore, nothing was shown in the statements of income or expenses, as budgeted or expended for the care of the needy, the sick or the imprisoned, traditionally the beneficiaries of the ministration of churches or for any kind of mission or evangelistic programs. The decision to expend church funds were made by the controlling family members of the organization, who served as voting members and board members, which significantly benefited the family. Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980,) affd. 670 F.2d 104 (9<sup>th</sup> Cir. 1981).

Additionally, organizations exempt under IRC 509(a)(1) & 170(b)(1)(A)(vi) are charities that normally receive a substantial part of their support from governmental and/or direct or indirect contributions from the general public.

IRC 6001 provides that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC 6033 states that every organization exempt from taxation under 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary may from time to time prescribe unless it meets the exception under this section.

Tax Reg. 1.6033-1(a) states, in part, that any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information unless exception is made under this section.

Tax Reg. 1.6033-1(c) states that in addition to such permanent books and records as are required by section (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts, and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by IRC 6033.



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended 06/30/20XX

Tax Reg. 1.6033-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

IRC 6652(c)(1)(a)(ii) states, in part, that in the case of a failure to include any of the information required to be shown on a return under section 6033(a)(1), or to show the correct information, there shall be paid by the exempt organization \$20 for each day during which such failure continues.

Revenue Ruling 59-95 provides that an organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. It was held that failure or inability to file the required information return or otherwise to comply with the provision of IRC 6033 and the regulations that implement it, may result in the termination of the exempt status of the organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

#### **TAXPAYER'S POSITION:**

The President understands the Service's position to propose revocation of designation of exemption under IRC 501(c)(3) and takes responsibility for the result of such action made but will use the 30-day period to determine his position.

#### **GOVERNMENTS POSITION:**

Since has been inactive, has not conducted any exempt activities as set forth in its Articles of Incorporation and Form 1023, Application for Exemption, nor secured any support, it is determined that it has not engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) and thus is not operated exclusively for charitable, educational, and other exempt purposes as described in IRC 501(c)(3). This is further evidenced by the closing of organizational bank accounts and not providing assistance to help recovering addicts.

Additionally, it is determined that the President and his son reside in a house listed in the organization's name which is not being used to house and assist recovering individuals with addictions as stated in its Form 1023 application. Although some of the utilities are listed in the name of the President, which he indicates to pay, the fact that he has claimed the mortgage interest and property taxes as deductions on his personal tax return and has a car listed in the organization's name which he used for personal use, is a benefit to the President. Furthermore, it is determined that effective controls of the organization's assets are handled by the President and not the governing board. Therefore, the organization serves a private rather than public interest and is not organized or operated exclusively for one or more exempt purposes as set forth in Tax Reg. 1.501(c)(3)-1(c)(2) and Tax Reg. 1.501(c)(3)-1(d)(1)(ii).

Although IRC 4958 was enacted to impose a tax on disqualified persons for excess benefit transactions as defined in IRC 4958(c), the value of the economic benefit would not be considered excessive and therefore is not being pursued. However, as stated in Tax Reg. 53.4958-8(a), IRC 4958 does not affect the substantive standards for tax exemption under IRC 501(c)(3), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual.

Further noted, organization's exempt as a public charity under IRC 509(a) normally receives a substantial part of its support from a governmental unit, the general public, or from any combination of gifts, grants, contributions, or membership fees and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business. Per Form 1023, it is stated that support will be provided from , , ,



Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 06/30/20XX

City/County Government, , board earned income, tenant's rental contributions, donations, individual giving, homeless service providers and yet, there is no evidence of contributions from the public, government or any other source.

In conclusion, the Service has made attempts to secure records such as bank statements, loan documents, meeting minutes, and financial statements in an effort to determine whether meets IRC 501(c)(3) requirements, is properly classified under the appropriate foundation status, to determine actual assets and how they are used. Irrespective of an inadequate records notice issued in a prior examination year, has not sufficiently maintained adequate records as set forth in IRC 6001 and IRC 6033 to substantiate its assets and activities.

**CONCLUSION:**

Based upon our review, it is determined that has not conducted any of the activities described in its Articles of Incorporation and Form 1023, which is to serve the substance abuse recovery community.

has failed to obtain any kind of support from the general public, government or fees from related activities. Assets of the organization have inured to the benefit of the President who has taken a deduction on his personal tax return for expenses associated with the facility listed in the name of the organization. Records have not been sufficiently provided to substantiate the organization's assets and how they have been used even upon the issuance of an inadequate records notice in a prior examination.

Therefore, we conclude that is not operated exclusively for charitable, educational, and other exempt purposes as described in IRC 501(c)(3), the organization serves a private rather than public interest and is not organized or operated exclusively for one or more exempt purposes as set forth in Tax Reg. 1.501(c)(3)-1(c)(2) and Tax Reg. 1.501(c)(3)-1(d)(1)(ii), and it has not sufficiently maintained adequate records as set forth in IRC 6001 and IRC 6033 to substantiate assets maintained by the organization.

The effective date of revocation is July 1, 20XX.